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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,536	09/30/2003	Robert Lee Cline	PO-7925/MD-02-52	6084
157 7590 03/29/2007 BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205			EXAMINER SAYALA, CHHAYA D	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/675,536

Applicant(s)

CLINE ET AL.

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-11, 13-17, 19-23, 25-29 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, 13-17, 19-23, 25-29, 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-11, 13-17, 19-23, 25-29, 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynnk et al (US Pub 2004/0016276) combined with Moore (US Patent 4804403).

Wynnk et al teach providing a controlled release particle, which comprises a particulate filler, a methane coating. The inert filler is defined at claim 13, See also claim 20, 22 and 31. The amount of filler is at claims 48 and 49, and is shown as 1-50% of the coating and 3-30% of the coating. The method of coating is shown at paragraphs [0071] to [0072]. The reference states that a first stream of polyol, a second stream of isocyanate, independently can be used on the fertilizer particle or vice versa. A third stream comprising the filler or one of the polyol or isocyanate with the filler is then applied. The third stream can be applied between the first and second streams or it can be applied as the first or last stream. The size of the filler is given at claim 17.

Furthermore, the reference states:

Alternatively mixtures of some or all components in the coating can be combined and applied in one or more streams. The mixing of coating components and order of introducing these streams

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into the system can be in any possible combination. These streams can be mixed in a nozzle before entering into the drum, or separately sprayed into the drum and mixed before contact with the fertilizer, or mixed on the surface of the fertilizer. Multiple application of these streams may be applied to obtain desired release and mechanical properties.

Note that the limitations of the now amended claims 1, 7, 13, 19, 25 and 31 are shown by Wynn et al. at paragraph [0045], [0047] –[0048], and optimizing within the range shown cannot be said to be inventive unless applicant can show an unobvious result. The fillers disclosed show that most are indeed insoluble in water and in fact, inert. See paragraphs [0041]-[0044].

Moore, used here as reinforcing teaching to the primary reference teaches using diluent fillers may be applied by blending with polyols and then applying this to a fertilizer particle. See col. 8, lines 22 +.

When the fertilizers are dry powders, they can be applied between the base coat and sealing layer between the sealer layer and water-insoluble coating, and between the water-insoluble coatings with each layer of powder applied prior to the application of polyol. The patent specifically states:

Application is made by adding the dry powder diluent to a mobile mass of coated particles to which additional layers of polyfunctional isocyanates and organic polyols are added to react according to the instant invention.

It is preferable to limit the amount of diluent filler used to no more than two times the weight of the polyol used in forming the granule, and the amount more preferably is limited to a weight equal to that of the polyol to obtain excellent attrition resistance.

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Several different diluent fillers may be employed in several sequential layers of a single particle or mass of particles. Thus, it was found possible to carry diluents of inerts, herbicides, and nutrients in a given particle or particles.

Based on the above disclosures, even though the patents do not teach the various permutations and combinations of applying the filler to a polyurethane coated fertilizer granulate, in well enunciated steps to recite method claims of the type herein, it would have been obvious to one of ordinary skill in the art, based on the prior art of record, that in following the references, each and every embodiment instantly claimed was already known in the art at the time the invention was made. Also based on such prior art, to make further modifications to optimize the various alternatives would have been obvious because the normal desire of scientists or artisans to improve upon what is already known provides the motivation to determine where in a disclosed set of parameters is the optimum combination of conditions to obtain the best possible product.

Response to Arguments

Applicant's arguments filed 1/8/2007 have been fully considered but they are not persuasive.

Applicant has chosen to ignore the quoted parts of both patents and their pertinent teachings, as reproduced in the rejection itself. These teachings suggest strongly the same thing that applicant is claiming. Instead, applicant has pointed to the parts of the references that do not pertain to the claimed invention, has pointed to the

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examples and has concluded that the references have nothing to do with the invention as claimed. This is strongly disagreed with because 1) it is impossible to ignore prior art teachings that strongly suggest doing the same thing as claimed herein and 2) it is well established that all of the disclosure must be considered not just the specific examples, In re Uhlig, 153 USPQ 460. The "non-preferred" as well as the "preferred" portion of a reference is pertinent for what it teaches to one skilled in the art. In re Meinhardt, 157 USPQ 270 (CCPA 1968). It follows therefore, that disclosure in any part of the patent, not just the claims, places the subject matter of the claims in the possession of the artisan having ordinary skill in the art and renders it old.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.